Federal Communications Commission **FCC 97-101**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-152
Telecommunications Act of 1996:	)	
	)	
Telemessaging,	)	
Electronic Publishing, and	)	
Alarm Monitoring Services	)	

SECOND REPORT AND ORDER

Adopted: March 21, 1997 **Released: March 25, 1997**

By the Commission:

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I. INTRODUCTION

1. In February 1996, the "Telecommunications Act of 1996" became law.[1] The intent of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2]

2. On July 18, 1996, the Commission released a Notice of Proposed Rulemaking (*NPRM*) regarding implementation of sections 260, 274, and 275 of the Communications Act addressing telemessaging, electronic publishing, and alarm monitoring services, respectively.[3] This Order implements the alarm monitoring provisions of section 275.[4]

3. Section 275 prohibits Bell Operating Companies (BOCs)[5] from providing alarm monitoring service until February 8, 2001, although it exempts from this prohibition those BOCs that were providing alarm monitoring service as of November 30, 1995.[6] This Order clarifies the definition of "alarm monitoring service" and the manner in which we will apply the nondiscrimination provisions of section 275(b). We address the enforcement issues related to sections 260, 274, and 275 in a separate proceeding.[7]

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq.* Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act."

[2] *See* Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Joint Explanatory Statement); *see also* 47 U.S.C. § 706(a) (encouraging the deployment of advanced telecommunications capability to all Americans).

[3] *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, Notice of Proposed Rulemaking, FCC 96-310 (July 18, 1996).

[4] On February 7, 1997, we released the First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-152 implementing the telemessaging and electronic publishing provisions of the Act. *See Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, CC Docket No. 96-152, First Report and Order and Further Notice of Proposed Rulemaking, FCC 97-35 (rel. Feb. 7, 1997).

[5] We define the term "BOC" as the term is defined in 47 U.S.C. § 153(4).

[6] *See* 47 U.S.C. § 275(a).

[7] *See Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, Notice of Proposed Rulemaking, FCC 96-460 (rel. Nov. 27, 1996).

II. SCOPE OF THE COMMISSION'S AUTHORITY

A. Scope of Authority Over Alarm Monitoring Services

1. Background

4. Pursuant to *Computer III*,[8] the Commission has traditionally regulated alarm monitoring services provided by BOCs[9] as enhanced (or information) services.[10] These rules applied to all BOC-provided alarm monitoring services -- intrastate as well as interstate. Because the Modified Final Judgment (MFJ) prohibition on BOC provision of interLATA telecommunications services also applied to interLATA information services, however, the BOCs were limited to providing alarm monitoring services on an intraLATA basis.[11]

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[8] Amendment of Section 64.702 of the Commission's Rules and Regulations (*Computer III*), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), *further recon.*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*), *second further recon.*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration Order*); *Phase I Order and Phase I Reconsideration Order vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California I*); Phase II, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*), *further recon.*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration Order*); *Phase II Order vacated, California I*, 905 F.2d 1217; *Computer III Remand Proceeding*, 5 FCC Rcd 7719 (1990) (*ONA Remand Order*), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*California II*); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) (*BOC Safeguards Order*), *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), (*California III*), *cert. denied*, 115 S. Ct. 1427 (1995). The Ninth Circuit Court of Appeals found that the Commission may only preempt inconsistent state rules regulating intrastate information services in such circumstances where exercise of such authority by the states would negate a valid federal regulatory goal.

[9] *See, e.g., Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd 13758, 13770 (Com. Car. Bur. 1995) (*CEI Plan Order*) (approving Ameritech's CEI plan for "SecurityLink" service).

[10] The Commission has determined that "all of the services that the Commission has previously considered to be 'enhanced services' are 'information services.'" *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-309 (rel. Dec. 24, 1996) at ¶ 102 (*Non-Accounting Safeguards Order*). Accordingly, we use the term "information services" to apply to both.

[11] Ameritech, however, was granted a waiver of the interLATA restriction to allow it to provide alarm monitoring service across LATA boundaries. *See United States v. Western Electric Co.*, No. 82-0192, slip op. (D.D.C. Sept. 8, 1995).

5. Section 275 of the Act refers generally to BOC and incumbent local exchange carrier (LEC) provision of alarm monitoring services and does not differentiate between interLATA and intraLATA or between interstate and intrastate alarm monitoring services. In the *NPRM*, we sought comment on the extent of the Commission's authority over intrastate alarm monitoring services.[12] We also asked whether, if the Commission lacks express authority over intrastate alarm monitoring services, the Commission has authority to preempt state regulation with respect to these matters pursuant to *Louisiana PSC*.[13]

2. Comments

6. Three BOCs and two state commissions generally contend that the Commission lacks authority over intrastate alarm monitoring services.[14] Ameritech and BellSouth argue that, because section 275 does not expressly confer general intrastate jurisdiction on the Commission, the Commission is "fenced off" by section 2(b) from adopting rules that apply to intrastate alarm monitoring services.[15] Hence, BellSouth and Bell Atlantic claim that the Commission may not exercise jurisdiction over such intrastate services unless the FCC can demonstrate that such services are inseparable from interstate alarm monitoring services, pursuant to the "impossibility exception" of *Louisiana PSC*.[16] The California Commission also argues that Congress did not intend to grant the Commission authority over intrastate alarm monitoring services.[17] The New York Commission asserts that the *Louisiana PSC* decision does not provide a basis for Commission preemption of state authority in the areas in question. It also argues that it is premature to make a determination about preemption at this juncture.[18]

7. AICC and AT&T, however, maintain that the Commission has jurisdiction over such services. AICC argues that the Commission should exercise jurisdiction over both

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[12] *NPRM* at ¶ 26-27.

[13] *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 377 (1986) (*Louisiana PSC*).

[14] *See, e.g.*, Ameritech comments at 6; Bell Atlantic comments at 3; BellSouth comments at 9; California Commission comments at 9; New York Commission comments at 2.

[15] Ameritech comments at 6; BellSouth comments at 9 (citing 47 U.S.C. § 152(b)).

[16] Bell Atlantic comments at 2-3; BellSouth comments at 9.

[17] California Commission comments at 4 ("California believes that Congress, in passing the Act, in no way intended to transfer the power to regulate intrastate services to the FCC as suggested in the *NPRM*, whether those services are provided by BOCs or [by other] LECs").

[18] New York Commission comments at 2.

intrastate and interstate matters because section 275 is "inextricably linked to the new jurisdictional landscape" of sections 251 and 271. It also contends that the plain language of the statute grants the Commission authority over all alarm monitoring matters and establishes no role for state commissions to resolve intrastate disputes.[19] AICC further maintains that, if the scope of section 275 were limited to interstate matters, a BOC could easily evade the section's restrictions and section 275 would be rendered moot.[20] AT&T also argues that an interpretation that excludes intrastate alarm monitoring services would nullify the safeguards established by Congress to govern the provision of these services.[21] AT&T further claims that, because Congress defined alarm monitoring service "without regard to LATA or other geographic boundaries," the Commission's authority under section 275 extends to all alarm monitoring services, whether interstate or intrastate, interLATA or intraLATA.[22]

3. Discussion

8. For the reasons stated below, we find that section 275, and the Commission's authority thereunder, applies to intrastate as well as interstate alarm monitoring services provided by incumbent LECs and their affiliates. We also find that section 2(b) does not limit the Commission's authority to establish rules governing intrastate alarm monitoring service pursuant to section 275. We hold, therefore, that the states may regulate incumbent LEC provision of alarm monitoring services, but may not do so in a manner that is inconsistent with section 275 and the rules established in this Order.[23]

9. We find that section 275, by its terms, applies to interstate and intrastate alarm monitoring services. The statute makes no distinction between interstate[24] and intrastate alarm

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[19] AICC comments at 3-8.

[20] AICC comments at 9; AICC reply at 4.

[21] AT&T reply at 22 n.56.

[22] *Id.* at 22.

[23] *See CCIA v. FCC*, 693 F.2d 198, 205, 214 (D.C. Cir. 1982) (upholding Commission preemption of state tariffing of customer premises equipment and enhanced services and finding that when state regulation of intrastate equipment or facilities interferes with achievement of a federal regulatory goal, the Commission's jurisdiction is paramount and conflicting state regulations must necessarily yield to the federal regulatory scheme).

[24] Alarm monitoring services are jurisdictionally interstate where the monitoring station lies in a different state from the home or business being monitored. *See Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 FCC Rcd 1619 (1992), *aff'd Georgia Public Service Comm'n v. FCC*, 5 F.3d 1499 (11th Cir. 1993) (finding BellSouth's voice mail service has an interstate communication component for

monitoring services, but rather enacts a broad prohibition on all BOC provision of alarm monitoring services, except for "grandfathered" BOCs.[25] Significantly, section 275(b) provides that "an incumbent *local exchange* carrier . . . engaged in the provision of alarm monitoring service shall not subsidize its alarm monitoring services either directly or indirectly *from telephone exchange service operations.*"[26] Because telephone exchange service is a local, intrastate service, section 275(b) plainly addresses intrastate service. Thus, the safeguards provided in section 275(b) clearly and explicitly relate to intrastate service. Given that section 275(b) applies explicitly to intrastate service, we find that Congress intended that all of section 275 apply to intrastate alarm monitoring service.

10. This interpretation of section 275 also is consistent with existing Commission regulation of alarm monitoring and other enhanced services. As discussed above, alarm monitoring services provided by BOCs are currently regulated as enhanced services and are subject to *Computer III* nondiscrimination safeguards.[27] These safeguards apply to the intrastate as well as interstate aspects of alarm monitoring services.[28]

11. We also find that adopting the view that section 275, and our authority thereunder, applies only to interstate services would lead to implausible results. If section 275 were interpreted to apply only to interstate alarm monitoring services, the five-year prohibition on BOC entry into alarm monitoring service in section 275(a) would apply only to the extent that a BOC provides alarm monitoring services on an interstate basis. Because the jurisdictional nature of an alarm monitoring service depends on whether the monitoring center is situated in the same state as the monitored premises, a BOC could escape a prohibition on providing interstate alarm monitoring service by establishing a monitoring center in each state in which it sought to do business.[29] We agree with AICC and AT&T that such a reading would render the section 275(a) prohibition against BOC entry into the alarm monitoring business nearly meaningless, a result that in our view is contrary to the plain intent of this

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jurisdictional purposes when accessed by a caller outside the state in which the service is located) (*BellSouth Corp.*).

[25] *Id.* § 275(a).

[26] 47 U.S.C. § 275(b) (emphasis added).

[27] *See supra* ¶ 4.

[28] Regulation under *Computer III* applied only to BOCs; non-BOC LECs that provided enhanced services prior to passage of the 1996 Act were not subject to *Computer III* regulation. *See BOC Safeguards Order.* We note, however, that certain of the *Computer III* requirements were extended to GTE in 1994. *See infra* note 129.

[29] *See* AICC comments at 9; *see also BellSouth Corp.*

section.[30] We further find that limiting the scope of the prohibition to interstate alarm monitoring services would be contrary to the rule of statutory construction "that one provision should not be interpreted in a way . . . that renders other provisions of the same statute inconsistent or meaningless."[31]

12. Nevertheless, several parties argue that sections 2(b) of the 1934 Act and 601(c) of the 1996 Act prevent the Commission from exercising authority over intrastate alarm monitoring services.[32] Section 2(b) provides that "nothing in this Act shall be construed to apply to or give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service . . . ."[33] In *Louisiana PSC,* the Supreme Court held that, in order to overcome section 2(b)'s limitation of Commission authority over intrastate service, Congress must either modify section 2(b) or grant the Commission additional authority over intrastate services.[34]

13. As discussed above, we find that Congress, by the Act's use of the term "telephone exchange service," explicitly granted the Commission authority over intrastate alarm monitoring services for the purpose of section 275. Accordingly, consistent with the Court's statement in *Louisiana,* we find that section 2(b) does not limit our authority over intrastate alarm monitoring services. Consistent with our finding in the *Local Competition Order*[35] and the *Non-Accounting Safeguards Order,*[36] we find that in enacting section 275

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[30] AICC comments at 9; AT&T reply at 22 n.56.

[31] *See Shields v. United States*, 698 F.2d 987, 989 (9th Cir. 1982), *cert. denied*, 464 U.S. 816; *see also Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1992) ("[W]e must . . . giv[e] effect to each word and mak[e] every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.") (citing *Boise Cascade Corp. v. EPA*, 942 F.2d 1427, 1432 (9th Cir. 1991)).

[32] *See, e.g.,* Ameritech comments at 6; BellSouth comments at 9; California Commission comments at 4.

[33] 47 U.S.C. § 152(b).

[34] *Louisiana PSC*, 476 U.S. at 377. Of course, the Court also recognized the continuing validity of federal preemption of state regulation where interstate and intrastate services are inseverable. *See id.* at 375 n.4.

[35] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), Order on Reconsideration, 11 FCC Rcd 13042 (1996), *further recon. pending, pet. for review pending sub nom. and partial stay granted, Iowa Utilities Board v. FCC*, No. 96-3221 and consolidated cases (8th Cir. filed Sept. 6, 1996), *partial stay lifted in part, Iowa Utilities Board v. FCC*, No. 96-3321 and consolidated cases, 1996 WL 589284 (8th Cir. Oct. 15, 1996), Second Order on Reconsideration, FCC 96-476 (rel. Dec. 13, 1996) 61 Fed.

after section 2(b) and addressing services that are intrastate in nature, Congress intended the express language of section 275 to take precedence over any limiting language in section 2(b).[37]

14. We similarly are not persuaded that section 601(c) of the 1996 Act evinces an intent by Congress to preserve states' authority over intrastate alarm monitoring. Section 601(c) of the 1996 Act provides that the Act and its amendments "shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments."[38] As shown above, we conclude that section 275 expressly modifies the Commission's existing statutory authority and authorizes adoption of regulations implementing the requirements of section 275 that apply to incumbent LECs' provision of both intrastate and interstate alarm monitoring service.

15. We also find implausible the suggestion that we should interpret section 275 to apply broadly to all alarm monitoring services, but that the Commission's rulemaking authority under that section is limited to interstate services. Rather, we conclude that the Commission's rulemaking authority pursuant to section 275 is coextensive with the reach of the statute. As discussed below, the Commission possesses broad rulemaking authority to implement and interpret provisions of the Communications Act.[39] Nothing in section 275 or elsewhere in the Act deprives the Commission of this authority.

16. We therefore find that section 275 and the Commission's authority thereunder apply to all alarm monitoring services -- interstate or intrastate -- and affirm our tentative conclusion that section 275 applies to interLATA and intraLATA alarm monitoring services. We further hold that the rules we establish to implement section 275 are binding upon the states and that states may not impose any requirements that are inconsistent with section 275 or the Commission's rules. Because we find that section 275 provides the Commission with direct authority over intrastate alarm monitoring services, we reject the argument of the New

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Reg. 66931 (Dec. 19, 1996).

[36] *Non-Accounting Safeguards Order* at ¶ 40.

[37] *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992) ("it is a commonplace of statutory construction that the specific governs the general"); *see also* 2 J. Sutherland, Statutory Construction § 22.34 (6th ed.) (where amended and original sections of a statute cannot be harmonized, the new provisions should prevail as the latest declaration of legislative will); *American Airlines, Inc. v. Remise Industries, Inc.*, 494 F.2d 196, 200 (2nd Cir. 1974). *See also Non-Accounting Safeguards Order* at ¶ 41.

[38] 1996 Act, § 601(c)(1), 110 Stat. 56, 143 (to be codified as a note following 47 U.S.C. § 152).

[39] *See infra* at ¶¶ 19-22.

York Commission that the Commission lacks authority to preempt inconsistent state rules regarding intrastate alarm monitoring services.[40]

B. Scope of Authority to Issue Rules to Implement Section 275

1. Background

17. Section 275 contains several terms that are subject to varying interpretation. The *NPRM* sought comment on whether several provisions of section 275 should be clarified.[41]

2. Comments

18. BOCs generally argue that the statutory non-accounting provisions relating to alarm monitoring services are complete and self-executing, and consequently that no federal rules are required.[42] The California Commission recommends that the Commission not issue "strict national rules," but should establish "guidelines for the states in these areas with sufficient explanation as to allow the states the ability to coordinate with the FCC's rules and comply with the Act."[43] AICC argues that the Commission should establish national rules interpreting section 275.[44]

3. Discussion

19. In the *NPRM*, we identified areas of ambiguity in the requirements of section 275 that may benefit from the adoption of rules that clarify and implement those mandates. We find that Congress enacted in section 275 principles that can best be implemented if we give affected parties more specific guidelines concerning the requirements of that section, which will enable the Commission to carry out effectively and efficiently its enforcement obligations under the Communications Act.

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[40] New York Commission comments at 2.

[41] *NPRM* at ¶ 68-74.

[42] *See* Bell Atlantic reply at 1-2; Pacific Telesis comments at 2-3; SBC comments at 2-3; U S WEST comments at 35; *see also* USTA comments at 2-3, 5-6.

[43] California Commission comments at 2, 9-10.

[44] AICC comments at 3-4, 20.

20. We reject the suggestion of the California Commission that we issue non-binding "guidelines" that would be applied by the states if they so choose. Such an approach could result in inconsistent and uncertain application of the requirements of section 275, which may deter or hamper alarm monitoring service providers that wish to offer service on a nationwide basis.

21. Based on the foregoing, we find, pursuant to the general rulemaking authority vested in the Commission by sections 4(i), 201(b), and 303(r) of the Communications Act, and consistent with fundamental principles of administrative law, that the Commission has the requisite authority to promulgate rules implementing section 275 of the Communications Act.

22. It is well-established that the Commission possesses authority to adopt rules to implement the requirements of the Communications Act. Sections 4(i), 201(b), and 303(r) of the Act authorize the Commission to adopt rules it deems necessary or appropriate in order to carry out its responsibilities under the Communications Act, so long as those rules are not otherwise inconsistent with the Communications Act.[45] Moreover, courts repeatedly have held that the Commission's general rulemaking authority is "expansive" rather than limited.[46] In addition, it is well-established that an agency has the authority to adopt rules to administer congressionally mandated requirements.[47]

C. Constitutional Issues

23. BellSouth and U S WEST raise constitutional concerns with respect to our implementation of section 275.[48] BellSouth contends that the Commission must be "circumspect" in its construction of section 275 because the prohibition on alarm monitoring services "impose[s an] impermissible prior restraint[] on BOCs' speech activities," in violation of the First Amendment.[49] Further, it maintains that section 275, as well as other sections of

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[45] *See United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202-03 (1956).

[46] *National Broadcasting Co. v. United States*, 319 U.S. 190, 219 (1943); *see also FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 793 (1978).

[47] *See Morton v. Ruiz*, 415 U.S. 199, 231 (1974) ("The power of an administrative agency to administer a congressionally created. . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress"); *see also Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[48] BellSouth comments at 2-3; U S WEST reply at 2-3. These concerns were not raised in response to any inquiry in the *NPRM*.

[49] BellSouth comments at 3.

the Act, are unconstitutional "bills of attainder" to the extent they single out BOCs by name and impose restrictions on them alone.[50] Recognizing that we have no discretion to ignore Congress' mandate to apply sections 275, BellSouth urges us to construe these sections, and others, narrowly.[51] U S WEST concurs with BellSouth that section 275 is an unlawful bill of attainder and urges the Commission not to adopt any structural rules beyond the express terms of the statute.[52]

24. Although decisions about the constitutionality of congressional enactments are generally outside the jurisdiction of administrative agencies,[53] we have an obligation under Supreme Court precedent to construe a statute "where fairly possible to avoid substantial constitutional questions" and not to "impute to Congress an intent to pass legislation that is inconsistent with the Constitution as construed by the [Supreme Court]."[54] As BellSouth concedes, we have no discretion to ignore Congress' mandate respecting these sections or any other sections of the Act.[55] Nevertheless, we find BellSouth's argument to be without merit. We find that the prohibition on the provision of alarm monitoring services in section 275 is not a restriction on BellSouth's speech under the First Amendment.

25. Similarly, we reject BellSouth and U S WEST's argument that section 275 is an unconstitutional "bill of attainder" because the statute singles out BOCs by name and imposes restrictions on them alone. We conclude that section 275 is not an unconstitutional

[50] BellSouth states that singling out BOCs for specific treatment under the Act violates "Articles I and III of the Constitution, and more specifically, the Bill of Attainder Clause, Art. I, § 9, cl. 3." *Id.* Article I, § 9, applicable to Congress, provides, in relevant part, that "[n]o Bill of Attainder or ex post facto Law shall be passed." U.S. Const. art. I, § 9. A Bill of Attainder is a legislative act that applies "either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial." Black's Law Dictionary 150 (5th ed. 1979).

[51] BellSouth comments at 3.

[52] U S WEST reply at 2-3 (contending that "FCC rules adding to these statutory restrictions -- especially if adopted as a matter of statutory interpretation, not public interest analysis, would create a second violation of the Constitution").

[53] *See Johnson v. Robison*, 415 U.S. 361, 368 (1974).

[54] *United States v. X-Citement Video*, 115 S. Ct. 464, 467, 469 (1994); *see also Non-Accounting Safeguards Order* at ¶ 279.

[55] BellSouth comments at 3.

bill of attainder simply because it applies only to the BOCs.[56] Rather, judicial precedent teaches that, in determining whether a statute amounts to an unlawful bill of attainder, we must consider whether the statute "further[s] nonpunitive legislative purposes," and whether Congress evinced an intent to punish.[57] We find no evidence, and BellSouth and U S WEST have offered none, that would support a finding that Congress enacted section 275 to punish the BOCs. Thus, we conclude that the section 275 restrictions imposed on BOCs do not violate the Bill of Attainder Clause.

III. ALARM MONITORING SERVICE DEFINED

A. Scope of Section 275(e)

1. Background

26. Section 275(e) defines "alarm monitoring service" as:

> a service that uses a device located at a residence, place of business, or other fixed premises - (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a [LEC] or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat . . . .[58]

The *NPRM* tentatively concluded that the provision of underlying basic tariffed telecommunications services does not fall within the definition of alarm monitoring service under section 275(e).[59] The *NPRM* further tentatively concluded that Ameritech's alarm monitoring service falls within the definition in section 275(e) and is therefore grandfathered under section 275(a)(2). The *NPRM* sought comment on whether any other services provided

[56] *See Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 471-72 (concluding that the fact that a statute applies only to a "limited group" does not automatically contravene the Bill of Attainder Clause).

[57] *Selective Serv. Sys. v. Minnesota Pub. Interest Research Group*, 468 U.S. 841, 852 (1984).

[58] 47 U.S.C. § 275(e).

[59] *NPRM* at ¶ 69.

by incumbent LECs should be considered alarm monitoring services under section 275(e) and grandfathered under section 275(a)(2).[60]

2. Comments

27. AICC, Entergy, and several of the BOCs agree with our tentative conclusion that alarm monitoring service is an information service.[61] In addition, all parties commenting on the issue agree that Ameritech's service is grandfathered as an alarm monitoring service under section 275(a)(2).[62]

28. There is also broad agreement that the provision of underlying basic transmission services does not constitute the provision of alarm monitoring service.[63] U S WEST argues, however, that transmission services used for alarm monitoring, such as its "Scan-Alert" and "Versanet" services, are alarm monitoring services because both services possess the characteristics and perform the functions described in section 275(e). Because U S WEST provided both services as of November 30, 1995, it argues that it is exempt under section 275(a)(2) from the five-year prohibition on offering alarm monitoring services.[64] Several BOCs, interexchange carriers, and members of the alarm monitoring industry disagree. They argue that services such as the services identified by U S WEST provide only a component of alarm monitoring service and therefore do not qualify as alarm monitoring services under section 275(e).[65] Many small alarm monitoring companies also dispute U S WEST's position on similar grounds.[66]

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[60] *Id.* at ¶ 70.

[61] AICC comments at 11-12; Entergy reply at 3-4. *See, e.g.*, Ameritech comments at 24; BellSouth comments at 2; SBC comments at 18.

[62] AICC comments at 13-15; Ameritech comments at 25-26; Entergy reply at 3-4; MCI reply at 9-10.

[63] AICC comments at 11-12; Ameritech comments at 25-26; Bell Atlantic comments at 13-14; BellSouth comments at 22; Entergy reply at 3-4; SBC comments at 18.

[64] U S WEST comments at 28-31.

[65] *See, e.g.*, AICC comments at 11-12; Ameritech comments at 25-26; BellSouth comments at 22; NYNEX comments at 25; SBC comments at 18; Entergy reply at 3-4; MCI reply at 9-10.

[66] We received letters from the following alarm monitoring service providers disputing U S WEST's interpretation of section 275(e): Robert R. Bean, President/CEO, Alert Holdings Group, Inc.; Walter L. Bent, President, Checkpoint Ltd.; Robert J. Berlin, Managing Partner, Morse Signal Devices; Robert A. Bonifas, President/CEO, Alarm Detection Systems, Inc.; David W. Carter, President/CEO, NSS National Security Service; Douglas DeMoss, President, Safeguard Alarms, Inc.; Michael L. Duffy, President, Per Mar Security Services;

3. Discussion

29. We find that a service provided by incumbent LECs to transmit information for use in connection with an alarm monitoring service, such as U S WEST's "ScanAlert" or "Versanet," does not constitute an alarm monitoring service as defined by the Act. We further find, for the reasons discussed below, that the service provided by Ameritech constitutes an alarm monitoring service, as defined by section 275(e).

30. Incumbent LEC Services Used to Transmit Alarm Monitoring Information. We conclude that an incumbent LEC that provides a service used to transmit alarm monitoring information used by a third party to furnish alarm monitoring service is not engaged in the provision of alarm monitoring service under the Act. U S WEST argues that its basic service "Scan-Alert" and enhanced "Versanet"[67] service qualify as alarm monitoring services under section 275(e) because these services "use" a device to receive signals from other devices at the customer's premises and transmit a signal to a remote monitoring center. U S WEST neither operates the monitoring center nor provides the "devices" that transmit the alarm signal. Rather, U S WEST only provides the transmission link between the two locations.

31. The definition of alarm monitoring service in section 275(e) does not specify whether the "device" that transmits the information or the service provided by the "remote monitoring center" that receives the information must be offered by a BOC in order for its service to qualify as an alarm monitoring service. Nor does the legislative history address this issue. We find, however, that a service that only transmits a signal from the monitored premises to the monitoring center, and therefore does not "use a device . . . to receive signals from other devices located at or about such premises . . . . " cannot qualify as alarm monitoring service regardless of whether it is regulated as a telecommunications service or an

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Patrick M. Egan, President, Commonwealth Security Systems, Inc.; Robert M. Gallagher, President, SVI Security Systems, Inc.; Donald J. George, President, George Alarm Company, Inc.; Larry Halpern, President, Safe Systems; Malcolm B. Hammond, President, Security Systems by Hammond, Inc.; Jerry D. Howe, President, Peak Alarm Company, Inc.; Lester D. Jones, Director of Operations, Valley Burglar & Fire Alarm Co., Inc.; Ronald D. LaFontaine, CEO, Security Systems, Inc.; James W. Lees, CEO/Treasurer, Sentry Protective Systems; Jerry J. Linder, President, ElectroSecurity Corporation; John Lombardi, President, Commercial Instruments & Alarm Systems, Inc.; Kirk D. MacDowell, Executive Vice President, Post Alarm Systems, Inc.; Charles T. May, President, Smith Alarm Systems; Larry McMillen, President, Midwest Alarm Company, Inc.; John J. Rooney, President/CEO, Sentry Alarm Systems of America, Inc.; Ralph W. Sevinor, President, Wayne Alarm Systems; Michael A. Boswell, Sales Manager, Vector Security; Jim D. Wade, President, Atlas Security Service, Inc.; Walter G. Wargacki, President, Merchant's Alarm Systems.

[67] "Versanet" is treated as an enhanced transmission service used by alarm monitoring providers because it involves code and protocol conversion. *See Applied Spectrum Technologies Inc.*, ENF No. 85-6, 58 R.R. 2d 881 (Com. Car. Bur., July 3, 1985); *see also Mountain States Tel. and Tel. Co.*, AAD 6-1104 1986 WL 291403 (Com. Car. Bur., Apr. 2, 1986).

information service.[68] Since alarm monitoring service is offered throughout the country by alarm companies that use BOC-provided basic telephone service to provide transmission between the monitored premises and the alarm monitoring center,[69] the statutory interpretation advocated by U S WEST would grandfather all BOCs and, consequently, would make none subject to the prohibition in section 275(a).[70] We reject this interpretation because it would render section 275(a) superfluous. For the same reason, we also reject U S WEST's contention that an information service used to transmit signals used for alarm monitoring, such as its "Versanet" service, should be classified as an alarm monitoring service merely because it includes an enhanced component.[71] Whether a particular service qualifies as an enhanced or information service does not necessarily qualify it as an alarm monitoring service. We therefore affirm our tentative conclusion that an incumbent LEC that provides a basic telecommunications service that is used by third parties to offer an alarm monitoring service is not engaged in the provision of an alarm monitoring service. We further find that an incumbent LEC that provides an enhanced service that transmits an alarm signal to a third party is not engaged in the provision of alarm monitoring service. We find that our conclusion will satisfy Congress's intent to impose a five-year restriction on BOC entry into the alarm monitoring services market and the associated protections to nonaffiliated alarm monitoring providers.

32. We clarify, however, that the prohibition on BOC provision of alarm monitoring services in section 275(a) applies only to alarm monitoring services as defined in section 275(e). Neither U S WEST nor any other BOC is precluded from continuing to provide telecommunications and information services used by unaffiliated firms to provide alarm monitoring service. We also clarify, in accord with BellSouth's request, that "service offerings such as remote meter reading . . . , remote monitoring of customer premises equipment (CPE) for maintenance and other purposes, or other services in which the purpose of the service offering is not to alert public safety personnel of [a] threat"[72] do not constitute alarm monitoring services because such services do not fall within the definition of alarm

[68] 47 U.S.C. § 274(e).

[69] *See* Letter from Danny E. Adams, Counsel, AICC, to William F. Caton, Acting Secretary, FCC (Nov. 27, 1996) at 1-2.

[70] 47 U.S.C. § 275(a).

[71] As discussed above, *supra* note 10, in the *Non-Accounting Safeguards Order*, the Commission held that all services that the Commission has previously considered to be enhanced services are information services. "Versanet" is treated as an information service because it employs protocol processing, an enhanced service. *See also supra* note 67.

[72] BellSouth comments at 24-25; BellSouth reply at 17-18.

monitoring service in section 275(e). Since section 275(e) defines alarm monitoring service specifically to include transmission of signals "regarding a possible threat at such premises to life, safety, or property from burglary, fire, vandalism, bodily injury or other injury . . ." we find that service offerings that do not involve a possible threat, such as those BellSouth mentions, do not fall within the definition in section 275(e).

33. Ameritech's Service. Ameritech's" SecurityLink" service was described in its 1995 CEI plan as "the sale, installation, monitoring and maintenance of intrusion and motion detection systems, fire detection systems, and other types of monitoring and control systems, . . . the transmission of a non-voice message from the residential, commercial or governmental alarm system to a central monitoring station . . . [and] a voice call placed by personnel at the monitoring station to the police or fire department and to persons designated to be contacted in the event of an alarm . . . ."[73] This service fits squarely within the definition of alarm monitoring service in section 275(e). We therefore find that Ameritech's "SecurityLink" service falls within the definition of an alarm monitoring service under section 275(e). Since Ameritech is the only BOC that was authorized to provide alarm monitoring service as of November 30, 1995,[74] we find that Ameritech is the only BOC that qualifies for "grandfathered" treatment under section 275(a)(2).[75]

B. Meaning of "Provision" in Section 275(a)

1. Background

34. Section 275(a)(1) prevents BOCs from "engag[ing] in the provision" of alarm monitoring service until February 8, 2001. Section 275(b) places certain nondiscrimination obligations on all incumbent LECs "engaged in the provision" of alarm monitoring services. In the *NPRM*, we sought comment on the types of activities that constitute the "provision" of alarm monitoring services subject to this section. We asked parties to address, with specificity, the levels and types of involvement in alarm monitoring that would constitute "engag[ing] in the provision" of alarm monitoring service. We tentatively concluded that resale of alarm monitoring service constitutes the provision of such service and sought comment on whether, among other things, billing and collection, sales agency, marketing and/or various compensation arrangements, either individually or collectively, would constitute the provision of alarm monitoring. We also asked parties to address any other

[73] *CEI Plan Order*, 10 FCC Rcd at 13770 (1995) (approving Ameritech's CEI plan for "SecurityLink" service).

[74] *Id.*

[75] 47 U.S.C. § 275(a)(2).

factors that may be relevant in determining whether an incumbent LEC, including a BOC, is providing alarm monitoring service under section 275.[76]

2. Comments

35. All of the commenters on this issue agree with our tentative conclusion that the resale of alarm monitoring service constitutes the provision of alarm monitoring under section 275.[77] Most BOCs maintain, however, that billing and collection, sales agency, marketing, and/or various compensation arrangements, either individually or collectively, do not rise to the level of "engag[ing] in the provision" of alarm monitoring service.[78] Other commenters, in contrast, assert that, because involvement in sales agency, marketing activities, and/or certain financial arrangements may provide an incumbent LEC with an incentive to favor one alarm monitoring company over another, such activities constitute the provision of alarm monitoring.[79] To interpret the term "provision" otherwise, according to some parties, may render the five-year prohibition on BOC provision of alarm monitoring meaningless.[80]

3. Discussion

36. We conclude, consistent with our reading of the statutory definition of alarm monitoring service, that an incumbent LEC, including a BOC, is engaged in the "provision" of alarm monitoring service if it operates the "remote monitoring center" in connection with the provision of alarm monitoring service to end users.[81] As noted above, if an incumbent

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[76] *NPRM* at ¶ 71.

[77] *See, e.g.*, AICC comments at 17; AICC reply at 9-10; Ameritech comments at 27; Bell Atlantic comments at 13-14; Entergy reply at 3.

[78] Bell Atlantic comments at 13-14; BellSouth comments at 23-24; BellSouth reply at 18; SBC comments at 19-20; U S WEST reply at 22 (acting as a sales agent for an unaffiliated alarm monitoring company is not the provision of alarm monitoring services under section 275); *but see* Ameritech comments at 27-28 (asserting that financial arrangements must be looked at on a case-by-case basis to see if the compensation is consistent with the value of the services rendered).

[79] AICC comments at 17, AICC reply at 9; Entergy reply at 4; MCI reply at 10-11.

[80] *See, e.g,* Letter from Malcolm B. Hammond, President, Security Systems by Hammond, Inc., to William F. Caton, Acting Secretary, FCC (Sept. 13, 1996); Letter from Robert R. Bean, President/CEO, Alert Holdings Group, Inc., to William F. Caton, Acting Secretary, FCC (Sept. 16, 1996); Letter from Michael L. Duffy, President, Per Mar Security Services, to William F. Caton, Acting Secretary, FCC (Sept. 18, 1996) (Per Mar Letter).

[81] *See* 47 U.S.C. § 275(e)(2).

LEC is merely providing the CPE and/or the underlying transmission service, it is not engaged in the provision of alarm monitoring service under section 275. We further find, consistent with Commission precedent, that the resale of a service constitutes the provision of that service.[82] We therefore affirm our tentative conclusion that the resale of alarm monitoring service constitutes the provision of such service under section 275. We also conclude that BOC performance of the billing and collection for a particular alarm monitoring company does not, in itself, constitute the provision of alarm monitoring service under section 275(a). Indeed, BOCs perform billing and collection for many services that they themselves do not offer and, in some cases, are barred from offering.[83]

37. We find that BOC participation in sales agency, marketing, and/or various compensation arrangements in connection with alarm monitoring services does not necessarily constitute the provision of alarm monitoring under section 275(a). Whereas other provisions of the Act explicitly bar BOCs from engaging in such activities in connection with other services, section 275 does not, by its terms, prohibit a BOC from acting as a sales agent or marketing alarm monitoring services.[84] We therefore reject AICC's suggestion that we should flatly prohibit BOCs from entering into arrangements to act as sales agents on behalf of alarm monitoring service providers or to market on behalf of, or in conjunction with, alarm monitoring services providers.[85]

38. We recognize, however, that there may be certain situations where a BOC is not directly providing alarm monitoring service, but its interests are so intertwined with the interests of an alarm monitoring service provider that the BOC itself may be considered to be "engag[ed] in the provision" of alarm monitoring in contravention of section 275(a).[86] We conclude therefore that we will examine sales agency and marketing arrangements between a BOC and an alarm monitoring company on a case-by-case basis to determine whether they

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[82] *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Service and Facilities,* Report and Order, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978).

[83] For example, although BOCs are not permitted to provide in-region interLATA services, they currently provide billing and collection services on behalf of long distance carriers. *See also* SBC reply at 19 n.61 (stating that it currently provides billing and collection for alarm monitoring services).

[84] We note that sections 272 and 274 explicitly bar BOCs from engaging in marketing activities on behalf of, or with, the separate affiliates required by those sections. *See* 47 U.S.C. §§ 272(g)(2), 274(c)(1)(B). *See also* SBC comments at 20.

[85] *See* AICC comments at 17.

[86] *See, e.g.,* AICC comments at 17; AICC reply at 10-11; Entergy reply at 4.

constitute the "provision" of alarm monitoring service.[87] In evaluating such arrangements, we will take into account a variety of factors including whether the terms and conditions of the sales agency and marketing arrangement are made available to other alarm monitoring companies on a nondiscriminatory basis.

39. In addition, we will also consider how the BOC is being compensated for its services. For example, if a BOC, acting as a sales agent or otherwise marketing the services of a particular alarm monitoring service provider, has a financial stake in the commercial success of that provider, such involvement with the alarm monitoring company may constitute the "provision" of alarm monitoring service. Such a BOC may be unlawfully providing alarm monitoring services if its compensation for marketing such services is based on the net revenues of an alarm monitoring service provider to which the BOC furnishes such marketing services. In that circumstance, a BOC's compensation would not be tied to its performance in marketing the unaffiliated firm's service, but rather would depend on the unaffiliated firm's performance in offering alarm monitoring service. We find that this approach to evaluating sales agency and marketing arrangements will preserve the strength of the five-year restriction on BOC entry into the alarm monitoring services market and the associated protections to nonaffiliated alarm monitoring providers.

40. Some parties have noted that the question of what constitutes "engag[ing] in the provision" of alarm monitoring service under section 275(a) is at issue in the context of Southwestern Bell Telephone Company's (SWBT) comparably efficient interconnection (CEI) plan to provide "security services."[88] The lawfulness of SWBT's security services is a fact-specific determination that is outside the scope of this rulemaking. We will not address, therefore, any comments filed in this proceeding that address the merits of SWBT's CEI plan. The SWBT CEI plan proceeding, however, will be resolved consistent with the rules and policies adopted in this Order.

41. Finally, we reject BellSouth's contention that section 275(a)(2) permits non-grandfathered BOCs to engage in the provision of alarm monitoring to the extent that they do not obtain an "equity interest in" or "financial control of" an alarm monitoring service

[87] *See* AICC comments at 18 (asserting that certain compensation arrangements, such as compensation for billing and collection services, may be used as a vehicle for revenue-sharing).

[88] *See SWBT's Plan for Security Service*, CC Docket Nos. 85-229, 90-623, and 95-20, filed Apr. 4, 1996; *Pleading Cycle Established for Comments on CEI Plan for Security Service*, CC Docket Nos. 85-229, 90-623, and 95-20, *Public Notice*, DA 96-645 (rel. Apr. 26, 1996).

provider.[89] We find that section 275(a)(2) pertains exclusively to alarm monitoring activities by a grandfathered BOC and, therefore, has no applicability to non-grandfathered BOCs.[90]

IV. EXISTING ALARM MONITORING SERVICE PROVIDERS

A. Background

42. Section 275(a)(1) generally prohibits the BOCs from engaging in the provision of alarm monitoring services until February 8, 2001. Section 275(a)(2) allows BOCs that were providing alarm monitoring services as of November 30, 1995, to continue to do so, but provides that "[s]uch Bell operating company or affiliate may not acquire any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity after November 30, 1995, and until 5 years after the date of enactment of the Telecommunications Act of 1996, except that this sentence shall not prohibit an exchange of customers for the customers of an unaffiliated alarm monitoring service entity." The *NPRM* sought comment on whether regulations are needed to define further the terms of section 275(a)(2) and, in particular, on what is meant by the terms "equity interest" and "financial control."[91] It also sought comment on the conditions under which an "exchange of customers" is permitted by the Act.[92]

B. Comments

43. Ameritech argues that section 275(a)(2) prohibits only acquisition of an "equity interest" in or "financial control" of a legally distinct alarm monitoring entity and that the statute does not preclude Ameritech from acquiring the assets of an unaffiliated alarm monitoring service entity.[93] AICC argues, in contrast, that section 275(a)(2) should be read broadly to prohibit a grandfathered BOC from expanding its alarm monitoring business through acquisitions of any kind.[94] AICC asserts, therefore, that we should interpret the term "financial control" in section 275(a)(2) to preclude a purchase of any or all of the assets of an

[89] BellSouth comments at 24.

[90] *See* Ameritech reply at 4.

[91] *NPRM* at ¶ 72.

[92] *Id.*

[93] Ameritech comments at 29; *see also* Letter from Antoinette Cook Bush, Counsel for Ameritech, to William F. Caton, Acting Secretary, FCC (Feb. 19, 1997).

[94] AICC comments at 20.

unaffiliated alarm monitoring service entity.[95] AICC also contends that section 275(a)(2) was not intended to dictate the form of Ameritech's acquisitions, but rather to prohibit them entirely.[96] A number of alarm monitoring companies also oppose Ameritech's recent purchase of Circuit City's alarm monitoring business and Ameritech's efforts to purchase other alarm monitoring businesses. They state that this type of activity, if unchecked, will render the five-year prohibition in section 275(a)(2) meaningless.[97]

C. Discussion

44. We conclude that regulations further interpreting the terms of section 275(a)(2) are not needed at this time. Both Ameritech and AICC offer differing interpretations of these terms and disagree on the applicability of section 275 in the context of a specific factual situation.[98] These circumstances have led us to conclude that the scope of section 275(a)(2) is better addressed on a case-by-case basis where the Commission is able to consider all of the facts that may apply to a particular transaction.

V. NONDISCRIMINATION SAFEGUARDS

A. Background

45. Section 275(b)(1) requires an incumbent LEC engaged in the provision of alarm monitoring services to "provide nonaffiliated entities, upon reasonable request, with the network services it provides to its own alarm monitoring operations, on nondiscriminatory terms and conditions."[99] Prior to the Act, alarm monitoring services were regulated as enhanced services and were subject to the nondiscrimination requirements established under

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[95] *Id.* at 25.

[96] *Id.* at 20-25; *see also* Letter from AICC to Reed E. Hundt, Chairman, FCC (Jan. 31, 1997).

[97] *See, e.g.,* Letter from Kirk D. MacDowell, Executive Vice President, Post Alarm Systems, to William F. Caton, Acting Secretary, FCC (Sept. 16, 1996); *see also* Letter from Danny E. Adams, Counsel to the AICC, to Regina Keeney, Chief, Common Carrier Bureau, FCC (Dec. 24, 1996); Letter from Letitia Chambers, Chambers Associates, Inc., to Reed E. Hundt, Chairman, FCC (Feb. 19, 1997).

[98] *See* AICC comments at 20-26; Ameritech comments at 28-30.

[99] 47 U.S.C. § 275(b)(1). Our discussion in this section is limited to section 275(b)(1). The implementation of section 275(b)(2) is addressed in *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996,* CC Docket No. 96-150, Report and Order, FCC 96-490 (rel. Dec. 24, 1996).

the Commission's *Computer II*[100] and *Computer III* regimes.[101] Under *Computer III* and *Open Network Architecture*,[102] BOCs have been permitted to provide enhanced services on an integrated basis. Moreover, BOCs have been required to provide at tariffed rates nondiscriminatory interconnection to unbundled network elements used to provide enhanced services.[103]

46. We noted in the *NPRM* that sections 201 and 202 of the Communications Act already place significant nondiscrimination obligations on common carriers.[104] We concluded that the *Computer III* nondiscrimination provisions continue to apply to the extent they are not inconsistent with the nondiscrimination requirements of section 275(b)(1).[105] We sought comment on whether the existing nondiscrimination and network unbundling rules in *Computer III*, as they apply to BOC provision of alarm monitoring service, are consistent with the requirements of section 275 and whether they should be applied to all incumbent LECs for the provision of alarm monitoring.[106] We also sought comment on whether and what types of specific regulations are necessary to implement section 275(b)(1), to the extent that parties argue that the nondiscrimination provisions of *Computer III* and *ONA* are inconsistent or should not be applied.[107]

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[100] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (*Final Order*), *recon.*, 84 FCC 2d 50 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[101] *See supra* note 8.

[102] *See Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1 (1988) (*BOC ONA Order*), *recon.*, 5 FCC Rcd 3084 (1990) (*BOC ONA Reconsideration Order*); 5 FCC Rcd 3103 (1990) (*BOC ONA Amendment Order*), *erratum*, 5 FCC Rcd 4045, *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993), *recon.*, 8 FCC Rcd 97 (1993) (*BOC ONA Amendment Reconsideration Order*"); 6 FCC Rcd 7646 (1991) ("*BOC ONA Further Amendment Order*); 8 FCC Rcd 2606 (1993) (*BOC ONA Second Further Amendment Order*), *pet. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (collectively referred to as the *ONA Proceeding*).

[103] *See Phase I Order*, 104 FCC 2d 958.

[104] NPRM at ¶ 71.

[105] *Id.*

[106] *Id.*

[107] *Id.*

B. Comments

47. Commenters, including a number of BOCs, argue that the language of section 275(b)(1) is sufficiently clear and that there is no need for the Commission to adopt additional rules to implement this provision.[108] If the Commission nonetheless adopts rules to implement section 275(b)(1), SBC argues that "those rules must apply equally to all incumbent LECs,"[109] while Cincinnati Bell would exempt "any LEC with less than 2% of the nation's access lines."[110]

48. AICC asserts that the nondiscrimination requirement of section 275(b)(1) does not require an incumbent LEC to provide network services that the LEC does not use in its own alarm monitoring operations.[111] U S WEST argues that if an incumbent LEC is not providing alarm monitoring services, it is not subject to the nondiscrimination requirement of section 275(b)(1).[112]

49. AICC recommends that we interpret the term "network services" in section 275(b)(1), like the term "network elements" in section 251(c), broadly to include "not only traditional telecommunications services, but also the features, functionalities and capabilities available through those services."[113] AICC argues that section 275(b)(1) imposes obligations on incumbent LECs that are "above and beyond" the nondiscrimination requirements of sections 201 and 202.[114]

50. Almost all commenters addressing the issue agree that the *Computer III/ONA* nondiscrimination requirements are consistent with section 275(b)(1) and contend that we should continue to apply them to BOC intraLATA alarm monitoring services.[115] AT&T

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[108] *See, e.g.*, Ameritech comments at 31; BellSouth comments at 25; Cincinnati Bell comments at 3; SBC comments at 21; USTA comments at 2.

[109] SBC comments at 21.

[110] Cincinnati Bell comments at 6.

[111] AICC comments at 28 n.51.

[112] U S WEST reply at 24.

[113] AICC comments at 28 n.50.

[114] *Id.* at 27.

[115] *See, e.g.*, AICC comments at 28; AT&T comments at 22; AT&T reply at 22-23; BellSouth comments at 25; MCI comments at 8.

would extend the *Computer III/ONA* requirements to all incumbent LECs.[116] Ameritech, however, asserts that the *Computer III/ONA* rules have "outlived their usefulness given the robust state of competition" in the enhanced services market.[117] Similarly, although it supports continued application of *Computer III/ONA* requirements to BOC provision of intraLATA alarm monitoring services, MCI asserts that they are inadequate to prevent access discrimination.[118] Further, AICC notes that there is no evidence that Congress intended to repeal the *Computer III/ONA* requirements for alarm monitoring services.[119]

C. Discussion

51. Meaning of Section 275(b)(1). We conclude that no rules are necessary to implement section 275(b)(1), based on the record before us; we will reconsider this decision if circumstances warrant.

52. As noted above, section 275(b)(1) obligates an incumbent LEC to provide nonaffiliated entities the same network services it provides to its own alarm monitoring operations on nondiscriminatory terms and conditions. We find that this nondiscrimination requirement does not require an incumbent LEC to provide network services that the LEC does not use in its own alarm monitoring operations. In addition, we agree with U S WEST that, if an incumbent LEC is not providing alarm monitoring services, it is not subject to the nondiscrimination requirement of section 275(b)(1).[120]

53. We also conclude that the nondiscrimination requirement of section 275(b)(1) is independent of the nondiscrimination requirement of section 202(a).[121] Section 275(b)(1) requires incumbent LECs to provide nonaffiliated entities, upon reasonable request, "network services . . . on nondiscriminatory terms and conditions."[122] Section 202(a) prohibits "any unjust and unreasonable discrimination . . . , or . . . any undue or unreasonable preference or

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[116] AT&T comments at 22-23; AT&T reply at 22-23.

[117] Ameritech comments at 31-32.

[118] MCI comments at 8.

[119] AICC comments at 27.

[120] U S WEST reply at 24.

[121] AICC comments at 27-28 n.50 (comparing the obligation to provide network services in section 275(b)(1) with the requirement to unbundle network elements in section 251(c)(3)).

[122] 47 U.S.C. § 275(b)(1).

advantage" by common carriers.[123] Because the section 275(b)(1) nondiscrimination bar, unlike that of section 202(a), is not qualified by the terms "unjust and unreasonable," we conclude that Congress intended a more stringent standard in section 275(b)(1).[124]

54. We interpret the term "network services" to include all telecommunications services used by an incumbent LEC in its provision of alarm monitoring service. We do not find that this section requires incumbent LECs to provide information services or other services that use LEC facilities or features not part of the LECs' bottleneck network because there is little danger of discrimination in the provision of such services.[125] We also decline to interpret the term "network services" as we do the term "network elements," to include "features, functionalities and capabilities available through those services," as AICC suggests.[126] Our definition of "network elements" is based on the statutory definition of that term, and we find no basis in section 275 or elsewhere in the Act for the definition of "network services" advocated by AICC.[127]

55. *Computer III/ONA* Requirements and Section 275(b)(1). We also conclude that the *Computer III/ONA* requirements are consistent with the requirements of section 275(b)(1).[128] We affirm our conclusion, therefore, that the *Computer III/ONA* requirements continue to govern the BOCs' provision of alarm monitoring services.[129] In addition, we find that the nondiscrimination requirements of section 275(b)(1) apply to the BOCs' provision of both intraLATA and interLATA alarm monitoring services, as well as other incumbent LECs' provision of alarm monitoring services. The parties have not indicated that there is any

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[123] *Id.* § 202(a).

[124] This conclusion is consistent with our interpretation of similar language in sections 251(c)(2) and 272(c)(1). *See Local Competition Order* at 15612, ¶ 217; *Non-Accounting Safeguards Order* at ¶ 197.

[125] *See Phase I Order*, 104 FCC 2d at 958.

[126] AICC comments at 27-28.

[127] *See* 47 U.S.C. § 153(29). *See also Local Competition Order* at 15616-17, ¶¶ 226-30.

[128] *See, e.g.*, AICC comments at 28; Ameritech comments at 32; BellSouth comments at 25; MCI comments at 8. *See also* AT&T comments at 22.

[129] We note that GTE is subject to many of the *Computer III/ONA* requirements that apply to the BOCs. Specifically, GTE must file an *ONA* plan and various *ONA* reports with the Commission, as well as comply with the customer proprietary network information, operations support systems, network disclosure, and nondiscrimination in installation and maintenance rules established under *Computer III*. *See Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation*, CC Docket No. 92-256, Report and Order, 9 FCC Rcd 4922 (1994).